

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

The Development of Operational,
Technical and Spectrum Requirements
For Meeting Federal, State and Local
Public Safety Agency Communication
Requirements Through the Year 2010

Establishment of Rules and Requirements
for Priority Access Service

WT Docket No. 96-86

COMMENTS OF THE MANAGER, NATIONAL COMMUNICATIONS SYSTEM

The Secretary of Defense, through duly authorized counsel, pursuant to Section 201 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. §481, and the Memorandum of Understanding between the Department of Defense and the General Services Administration dated November 27, 1950, hereby files these comments as Executive Agent of the National Communications System (NCS)¹, on behalf of the Manager of the NCS.

¹Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions", April 3, 1984 (49 Fed. Reg. 13471, 1984), established the National Communications System (NCS) which consists of an administrative structure involving the Executive Agent, Committee of Principals, Manager, and telecommunications assets of the Federal organizations which are represented on the Committee of Principals. Section 1(e) of EO 12472 designates the Secretary of Defense as Executive Agent for the NCS. By direction of the Executive Office of the President, the NCS member organizations which are represented on the Committee of Principals are: Department of Agriculture, Central Intelligence Agency, Department of Commerce, Department of Defense, Department of Energy, Federal Emergency Management Agency, General Services Administration, Department of Justice,

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In this proceeding², the Commission begins an examination of "priority access". It does so in response to a Petition for Rulemaking filed by the Manager, NCS and the Final Report of the Public Safety Wireless Advisory Committee. The NCS Petition, filed in October, 1995, sought expeditious Commission action establishing rules to govern the provision of what was termed Cellular Priority Access Service (CPAS). The petition was filed after a large number of parties representing Federal, State and local governments, trade associations, manufacturers, and carriers had participated in a series of meetings over a two year period. The meetings were held after it became clear that persons whose responsibilities were to respond to emergency situations could not utilize what they had become increasingly reliant on, cellular service, to meet those responsibilities. The meetings led to a consensus of what was needed to assure access to cellular services by those responding to emergency situations. Thereafter, the NCS filed its petition for rulemaking.

Now, two years later, the Commission has acted in response to the October, 1995, NCS petition by stating an intent to examine a broad spectrum of issues relating to priority access. No rules are proposed. The Commission states "We ...believe that the record developed thus far

National Aeronautics and Space Administration, the Joint Staff, Department of State, Department of Transportation, Department of the Treasury, U.S. Information Agency, the Department of Veterans Affairs, Department of Health and Human Services, Department of the Interior, National Security Agency, the National Telecommunications and Information Administration and the Nuclear Regulatory Commission. The Federal Communications Commission, the United States Postal Service and Federal Reserve Board also participate in the activities of the NCS. The vast majority of the telecommunications assets of these 23 organizations are leased from commercial communications providers and serve the National Security and Emergency Preparedness (NS/EP) needs of the Federal government as well as state and local governments.

²*Second Notice of Proposed Rulemaking*, WT Docket 96-86, FCC 97-373, released October 24, 1997. (Second Notice)

regarding the NCS Petition does not furnish us with an adequate basis at this time for making more comprehensive proposals on issues relating to priority access.”³. It is not necessary to make “more comprehensive proposals on issues relating to priority access” to implement CPAS. The NCS is not aware of any change in the previously identified requirement for CPAS. Commission inaction on the NCS Petition should not be justified on the basis that the overall picture has gotten more complicated. Failure to adopt CPAS rules pending resolution of all the issues raised by the Commission herein ignores a demonstrated need and does the public a disservice. The Commission can adopt CPAS rules now. Although the Commission indicates that it is beginning “an expeditious process” to resolve the issues herein⁴, including CPAS, combining CPAS with the broader issues has already resulted in a considerable delay.

The Commission asks for comments on a wide variety of issues associated with priority access.

Priority Levels The NCS believes it is necessary to establish a formal prioritization structure rather than an informal, more flexible solution. Only a single nationwide uniform system will permit persons involved in National Security and Emergency Preparedness (NS/EP) activities to utilize the same instrument in various jurisdictions. This is not solely a Federal concern. Utility companies frequently send crews to distant jurisdictions in emergencies. Emergency teams from the Montgomery County, Maryland Fire Department and elsewhere assisted in Oklahoma City.

³Second Notice, par. 189

⁴Second Notice, par. 187

As was noted in the NCS Petition, several states had acted to require cellular priority access schemes. A uniform, nationwide system is necessary.

Spectrum Capacity of Commercial Carriers Networks The Commission seeks comments on whether the increase in spectrum allocated for public safety communications or other developments could diminish the need for priority access arrangements. As the NCS stated in its Reply Comments to the Public Notice issued on its petition (Reply Comments), filed in July, 1996, it is unlikely that CPAS would ever completely serve as a substitute for public safety radio. But what was unique to cellular was its ability to interconnect to the public switched network. So while it is anybody's guess whether additional spectrum for or other developments in public safety radio will diminish the need for priority access, the NCS knows of no plan by emergency responders to discontinue use of cellular telephones even with additional spectrum available for other services.

Carrier Liability under Section 202(a) The NCS had argued in its petition that there was ample precedent for a Commission conclusion that carrier provision of CPAS to NS/EP personnel should not be found to be a violation of Section 202(a). The Commission has proposed several methods to reach that result. However, the Commission "tentatively agrees" with BellSouth that there could be a liability problem if the service is offered on a voluntary versus a mandatory basis.⁵ In November, 1993, the NCS sought a declaratory ruling from the

⁵Second Notice, par. 200

Commission that the provision of call-by-call priorities over the public switched network for NS/EP purposes would not constitute a violation of Section 202(a). The service contemplated was to be provided via contract with selected carriers and not a service made mandatory by the Commission. Contracts were entered into and necessary tariffs filed. In August, 1995, the Commission dismissed the petition without prejudice because lawful tariffs (providing for call-by-call priorities) had already gone into effect. Consideration of voluntary or mandatory does not appear to have been a factor.⁶ Nonetheless, regardless of what issues there may be, the NCS is confident that the Commission will fashion a method or argument, as it has in the past, that will assure carriers that they will not have to be overly concerned with damages arising from a Section 202(a) complaint.

Voluntary or Mandatory Provision of Priority Access The NCS Petition proposed the voluntary provision of CPAS believing it was an effective method of having the service available where it was needed. As the NCS Reply Comments stated, the matter is appropriate for comments. The NCS will support whatever the Commission decides on the voluntary vs. mandatory issue and, as well, cooperate with reasonable funding mechanisms as may be determined appropriate. To implement CPAS now, it would be appropriate to make its provision voluntary and to have the cost causer pay the cost. If that changes as a result of final resolution of the issues to be resolved, so be it.

⁶File No. DA 94-31. Letter of August 30, 1995 attached hereto.

Potential Limitations of Priority Access Service The Commission correctly notes that there are limitations to the priority access proposed by the NCS⁷. The NCS has never denied there were limitations to CPAS. What the NCS proposed was what potential users wanted and what carriers said they could provide, with time. In the NCS' view, those acknowledged limitations have been exacerbated by the lack of Commission rules. Standards development and CPAS implementation slowed because carriers had no approved rules to guide standards adoption and implementation. Had the Commission acted more expeditiously, it is likely that the time frames given the NCS by the carriers participating in the standards process could have proven true. As set forth in the NCS Reply Comments, it had been told by industry that a 1997 service date for a limited type service was possible if standards were developed by the end of 1996. Alas, it was not to be.

Other Issues The NCS agrees with the Commission's tentative conclusion that priority access rules should apply to all CMRS providers, including cellular. While it is not clear at this time where congestion might occur in PCS networks, the Commission may wish to allow providers to offer a CPAS-like service if required pending final resolution of this scope issue,

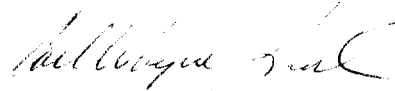
As to administration of any rules that may be adopted, the NCS reaffirms its intention to assist the Commission as may be appropriate.

⁷The Commission expresses concern about security limitations relating primarily to analog-based systems (Second Notice, par. 220), however, CPAS will not be available with analog-based systems.

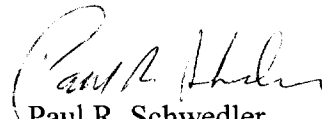
Conclusion

There is a need for CPAS that need not await the conclusion of this proceeding for implementation. Rules proposed by the NCS, as perhaps modified by early round comments in this proceeding, should be proposed and adopted without delay.

Respectfully submitted,



Carl Wayne Smith
General Counsel



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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN REPLY REFER TO:
1600B

August 30, 1995

Carl Wayne Smith, Esq.
Chief Regulatory Counsel,
Telecommunications, DoD
Office of the Manager
National Communications System
Washington, D.C. 20305-2910

Re: File No. DA 94-31
Office of the Manager, National Communications System
Request for Advice Letter Regarding National
Security and Emergency Preparedness Services

Dear Mr. Smith:

On November 29, 1993 the Office of the Manager of the National Communications System (OMNCS) requested that the Commission issue an "advice letter" stating that common carriers may provide call-by-call priorities over the public switched network (PSN) for national security and emergency preparedness (NS/EP) purposes.

A call-by-call priority system would automatically identify the NS/EP status and priority level of individual calls as they traverse the PSN. This capability could be used by a modern telecommunications system to provide special routing and other reliability features to enhance call completion of NS/EP calls during situations of network blockage.

OMNCS requested the Commission to issue a declaratory ruling that provision of call-by-call priority service does not constitute unjust or unreasonable discrimination, preference, advantage or prejudice under Section 202(a) of the Communications Act of 1934. 47 U.S.C. Section 202(a).

On January 7, 1994, the Commission issued a Public Notice (DA 94-31), entitled "Providing Call-By-Call Priorities Over the Public Switched Network". In response to the public notice, seven comments and seven reply comments were filed. These comments generally agree with the OMNCS position that a call-by-call priority system in support of NS/EP communications requirements should not be considered unreasonable under Section 202(a). However, the comments also indicated a need for additional information regarding such important issues as system development, administration, payment for service, and the relationship of a call-by-call system to other services provided by the PSN.

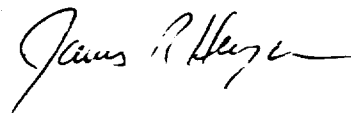
In September of 1994, OMNCS completed development of the Government Emergency Telecommunications Service (GETS). Tariffs filed with the Commission to implement GETS have gone into effect.

On March 10, 1995, in an ex parte presentation, OMNCS representatives provided a response to questions posed by FCC staff. OMNCS explained that GETS is a service developed to improve the likelihood that NS/EP emergency calls will be completed when the PSN is generally impassable due to damage or congestion. A new nationwide PSN area code (area 710) has been established for GETS and implementation by the three largest interexchange carriers (IXCs) has been completed. OMNCS has funded the costs of developing GETS and adding the 710 area code to network switches. GETS tariffs filed with the FCC by the three IXCs establish rates, terms and conditions of this service. Implementation of GETS by local exchange carriers (LECs) is in process. Currently, all GETS calls are billed to the OMNCS.

Other information provided at the ex parte meeting included a statement that authorized users use GETS during emergency situations when calls cannot be completed on the PSN. The OMNCS representatives said that their pending request does not involve priority access to the PSN by wireless users but that certain aspects of wireless access will be addressed in a separate Cellular Priority Access Service proceeding to be initiated at the Commission in the future.

As described above, call-by-call priority is a feature of the federally managed GETS program. Lawful tariffs implementing that service have gone into effect; thus, it appears that the request for declaratory ruling filed on November 29, 1993 is moot. Accordingly, pursuant to Section 1.4 of the Commission's rules, the petition for declaratory ruling is dismissed without prejudice.

Sincerely,

A handwritten signature in black ink, appearing to read "James R. Keegan", with a stylized flourish at the end.

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau